



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/169747

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 23, 2015, at Madison, Wisconsin.

The issue for determination is whether the Department correctly sought to intercept the Petitioner's tax refund to collect an overpayment of FoodShare benefits from the period of March 1, 2014 to June 30, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], ESS
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County who resided with his mother, [REDACTED] in a FoodShare (FS) group of two during the FS overpayment period of March 1, 2014 to June 30, 2014.

2. Petitioner's mother was the FS casehead for that FS group of two.
3. The county agency sent December 20, 2013 and March 24, 2014 notices to the petitioner's mother which explained her requirement to report to the agency changes in her FS household income by the 10th of the next month of her household income exceeding \$1,681.
4. Petitioner's mother worked for [REDACTED] during the period of January – November, 2014.
5. Petitioner's mother failed to notify the county agency that her son, [REDACTED] (petitioner) began working for [REDACTED] as of January, 2014, and that her household income exceeded the reporting threshold (\$1,681) as of February 10, 2014. Petitioner failed to report the increase in her household income to the agency.
6. On April 7, 2015, the county agency issued separate Notices of Food Stamp Overissuance to the petitioner and to his mother at the correct address of record advising them that it had opened Claim no. [REDACTED] and was seeking repayment of \$1,008 in FS benefit overpayments from the period of March 1, 2014 to June 30, 2014, due to failure to timely report household income which exceeded FS program income limits due to client error.
7. The agency sent a June 2, 2015 repayment agreement to the petitioner. The agency also sent Dunning notices to the petitioner regarding his FS overpayment on June 2, 2015, July 7, 2015, and August 4, 2015.
8. Neither petitioner's mother nor the petitioner filed any timely appeal to the Division of Hearings and Appeals (DHA) regarding his/her April 7, 2015 FS overpayment notices.
9. The Department sent a September 11, 2015 FS tax intercept notice to the petitioner at his address of record (petitioner's mother's address) notifying him that the remaining unpaid FS overpayment of \$970.00 would be recovered through interception of his state or federal income taxes or credits. That notice was not returned as undeliverable.
10. The petitioner mailed an October 26, 2015 appeal letter to the Division of Hearings and Appeals (DHA) requesting an appeal of his September 11, 2015 FS tax intercept notice and the underlying FS overpayment from the period of March 1, 2014 to June 30, 2014. That appeal was postmarked October 27, 2015, and was received at DHA on October 30, 2015.
11. The petitioner was unable to establish that he had filed any FS overpayment or tax intercept appeal with DHA prior to October 27, 2015.
12. During the November 23, 2015 hearing, the county agency representative explained due to recoupments from his mother's FS benefits, the remaining amount of petitioner's FS overpayment was reduced to \$932.00 as of the November 23, 2015 hearing date.

DISCUSSION

Wis. Stat. § 49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of Food Stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4) (b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.** (Emphasis added)

As noted in Findings of Fact #3 - #8 above, the petitioner's mother and petitioner had the opportunity for a prior hearing on the merits of their FS overpayment, but each of them failed to file any timely appeal to DHA.

During the November 23, 2015 hearing, petitioner and his sister questioned why the FS overpayment and interception was seeking recovery from him when his mother, [REDACTED], was the FS casehead during the period of March 1, 2014 to June 30, 2014. The food stamp regulations permit the recovery of an overpayment of food stamps from **any adult person who was a member of the overpaid food stamp household.** Based upon the evidence in the hearing record, the petitioner was an adult member of the FS household of his mother which was overpaid. 7 C.F.R. § 273.18(a), provides in pertinent part:

Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State agency shall establish a claim against...any household which contains an adult member of another household that received more food stamp benefits than it was entitled to receive. (Emphasis added).

As a result, the petitioner is jointly and severally liable along with his mother for the FS overpayment and the resultant FS tax intercept.

During the November 23, 2015 hearing, the county representative, [REDACTED], presented convincing testimony and substantial reliable exhibits to establish that the Department correctly sought to intercept the Petitioner's tax refund to collect an overpayment of FoodShare benefits from the period of March 1, 2014 to June 30, 2014. The petitioner did not contest that his mother had received her FS overpayment or dunning notices. Furthermore, there is no evidence that any of those notices to petitioner or his mother were returned as undeliverable. Moreover, petitioner did not establish with any reliable evidence that his mother or he had any problems with their mail delivery.

The petitioner alleged that he did not timely receive his September 11, 2015 tax intercept notice sent to him at his mother's home. However, his testimony was contradictory and not credible, as he at first alleged that he did not receive the tax intercept notice until the first week of November, 2015, but later in the hearing was unable to explain how he would have known to file that appeal with DHA on October 27, 2015. See Finding of Fact #10 above. The agency representative argued that petitioner's October 27, 2015 appeal was not timely filed within 30 days of the date of the September 11, 2015 tax intercept notice, and thus his appeal was untimely. The petitioner's appeal in the instant case may very well be untimely, but due to his changes of address, I will not base the decision in this case upon being untimely.

During the hearing, petitioner denied timely receiving his notices but was not convincing, given that none of his notices were returned to the county agency as undeliverable. The petitioner's mother certainly may have given the notices to petitioner even if he was not residing with her during certain periods of 2015. However, petitioner's mother did not testify at the hearing to establish any explanation or corroboration regarding what happened to mail sent to the petitioner at her home address. I

The petitioner did not dispute the calculation of the FS original overpayment amount of \$1,080 and did not dispute that neither he nor his mother had filed a timely appeal to DHA of that FS overpayment despite recoupments being taken out of his mother's FS benefits. In addition, there have been no issues raised regarding the accuracy of the tax intercept calculation, which is the subject of this review, I must conclude that the interception action is appropriate. Based upon the above, the determination by the Department that petitioner was overpaid is affirmed. The petitioner explained that it would be a financial burden to repay the FS overpayment.

However, the Department is required to recover all overpayments of public assistance benefits due to client and non-client error, and the state must take all reasonable steps necessary to promptly correct any overpayment.). *See also*, Wis. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19...); 7 C.F.R. § 273.18(a) ("...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive....), Wis. Stat. § 49.125(1). The Department may utilize tax intercept as a means of recovering the overpayment. *See*, Wis. Stat. § 46.85.

CONCLUSIONS OF LAW

The Department has correctly certified a public assistance remaining debt of \$932 as of the November 23, 2015 hearing date in overpaid FS benefits to the Wisconsin Department of Revenue for state income tax refund intercept from the petitioner.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

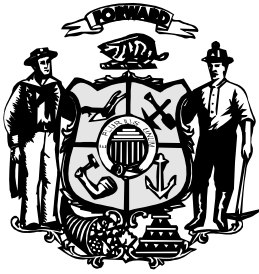
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of November, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 24, 2015.

Dane County Department of Human Services
Public Assistance Collection Unit